

SAVINGS

§ 137.210 What happens if self-governance activities under Title V reduce the administrative or other responsibilities of the Secretary with respect to the operation of Indian programs and result in savings?

To the extent that PSFAs carried out by Self-Governance Tribes under Title V reduce the administrative or other responsibilities of the Secretary with respect to the operation of Indian programs and result in savings that have not otherwise been included in the amount of Tribal shares and other funds determined under section 508(c) of the Act [25 U.S.C. 458aaa-7(c)], the Secretary must make such savings available to the Self-Governance Tribes, for the provision of additional services to program beneficiaries in a manner equitable to directly served, contracted, and compacted programs.

§ 137.211 How does a Self-Governance Tribe learn whether self-governance activities have resulted in savings as described in § 137.210.

The annual report prepared pursuant to section 514(b)(2) [25 U.S.C. 458aaa-13(b)(2)] of the Act must specifically identify any such savings.

ACCESS TO GOVERNMENT FURNISHED
PROPERTY**§ 137.215 How does a Self-Governance Tribe obtain title to real and personal property furnished by the Federal Government for use in the performance of a compact, funding agreement, construction project agreement, or grant agreement pursuant to section 512(c) of the Act [25 U.S.C. 458aaa-11(c)]?**

(a) For government-furnished real and personal property made available to a Self-Governance Tribe, the Self-Governance Tribe must take title to all real or personal property unless the Self-Governance Tribe requests that the United States retain the title.

(b) For government-furnished personal property made available to a Self-Governance Tribe:

(1) The Secretary, in consultation with each Self-Governance Tribe, must develop a list of the property used in a

compact, funding agreement, or construction project agreement.

(2) The Self-Governance Tribe must indicate any items on the list to which the Self-Governance Tribe wants the Secretary to retain title.

(3) The Secretary must provide the Self-Governance Tribe with any documentation needed to transfer title to the remaining listed property to the Self-Governance Tribe.

(c) For government-furnished real property made available to a Self-Governance Tribe:

(1) The Secretary, in consultation with the Self-Governance Tribe, must develop a list of the property furnished for use in a compact, funding agreement, or construction project agreement.

(2) The Secretary must inspect any real property on the list to determine the presence of any hazardous substance activity, as defined in 41 CFR 101-47.202-2(b)(10).

(3) The Self-Governance Tribe must indicate on the list to the Secretary any items of real property to which the Self-Governance Tribe wants the Secretary to retain title and those items of property to which the Self-Governance Tribe wishes to obtain title. The Secretary must take such steps as necessary to transfer title to the Self-Governance Tribe those items of real property which the Self-Governance Tribe wishes to acquire.

MATCHING AND COST PARTICIPATION
REQUIREMENTS**§ 137.217 May funds provided under compacts, funding agreements, or grants made pursuant to Title V be treated as non-Federal funds for purposes of meeting matching or cost participation requirements under any other Federal or non-Federal program?**

Yes, funds provided under compacts, funding agreements, or grants made pursuant to Title V may be treated as non-Federal funds for purposes of meeting matching or cost participation requirements under any other Federal or non-Federal program.

§ 137.220

FEDERAL TORT CLAIMS ACT (FTCA)

§ 137.220 Do section 314 of Public Law 101-512 [25 U.S.C. 450f note] and section 102(d) of the Act [25 U.S.C. 450f(d)] (regarding, in part, FTCA coverage) apply to compacts, funding agreements and construction project agreements?

Yes, regulations governing FTCA coverage are set out at 25 CFR Part 900, Subpart M.

Subpart J—Regulation Waiver

§ 137.225 What regulations may be waived under Title V?

A Self-Governance Tribe may request a waiver of regulation(s) promulgated under section 517 of the Act [25 U.S.C. 458aaa-16] or under the authorities specified in section 505(b) of the Act [25 U.S.C. 458aaa-4(b)] for a compact or funding agreement entered into with the IHS under Title V.

§ 137.226 How does a Self-Governance Tribe request a waiver?

A Self-Governance Tribe may request a waiver by submitting a written request to the Secretary identifying the applicable Federal regulation(s) sought to be waived and the basis for the request.

§ 137.227 How much time does the Secretary have to act on a waiver request?

The Secretary must either approve or deny the requested waiver in writing within 90 days after receipt by the Secretary.

§ 137.228 Upon what basis may the waiver request be denied?

A denial may be made only upon a specific finding by the Secretary that identified language in the regulation may not be waived because such waiver is prohibited by Federal law.

§ 137.229 What happens if the Secretary neither approves or denies a waiver request within the time specified in § 137.227?

The waiver request is deemed approved.

42 CFR Ch. I (10-1-10 Edition)

§ 137.230 Is the Secretary's decision on a waiver request final for the Department?

Yes, the Secretary's decision on a waiver request is final for the Department.

§ 137.231 May a Self-Governance Tribe appeal the Secretary's decision to deny its request for a waiver of a regulation promulgated under section 517 of the Act [25 U.S.C. 458aaa-16]?

The decision may not be appealed under these regulations but may be appealed by the Self-Governance Tribe in Federal Court under applicable law.

Subpart K—Withdrawal

§ 137.235 May an Indian Tribe withdraw from a participating inter-Tribal consortium or Tribal organization?

Yes, an Indian Tribe may fully or partially withdraw from a participating inter-Tribal consortium or Tribal organization its share of any PSFAs included in a compact or funding agreement.

§ 137.236 When does a withdrawal become effective?

A withdrawal becomes effective within the time frame specified in the resolution that authorizes withdrawal from the participating Tribal organization or inter-Tribal consortium. In the absence of a specific time frame set forth in the resolution, such withdrawal becomes effective on

(a) The earlier of 1 year after the date of submission of such request, or the date on which the funding agreement expires; or

(b) Such date as may be mutually agreed upon by the Secretary, the withdrawing Indian Tribe, and the participating Tribal organization or inter-Tribal consortium that has signed the compact or funding agreement on behalf of the withdrawing Indian Tribe, inter-Tribal consortium, or Tribal organization.